Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1930

No. 124

THE FIRST NATIONAL BANK OF CHICAGO, A NATIONAL BANKING ASSOCIATION, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED MAY 16, 1930

CERTIORARI GRANTED JUNE 2, 1930

(35,036)

(35,036)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 905

THE FIRST NATIONAL BANK OF CHICAGO, A NATIONAL BANKING ASSOCIATION, PETITIONER,

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THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 17, 1930

[fol. 1]

IN SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 905

THE FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

vs.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows as follows:

On February 28, 1928, it presented its petition to the Court of Claims, praying a judgment against the United States in the amount of $9,124.70, representing, as alleged, the amount of Federal income tax illegally assessed and collected by the United States from the plaintiff for the year 1922, with interest thereon. Claim for refund of such tax so assessed and collected from the petitioner had been disallowed by the Commissioner of Internal Revenue.

The First National Bank of Chicago, as set forth in said petition, in its consolidated 1922 income tax return included the returns, among others, of the First-Trust Joint Stock Land Bank of Chicago and the First-Trust Joint Stock Land Bank of Dallas, organized, respectively, under the Federal Farm Loan Act of July 17, 1916. In said latter returns interest in the amount of $78,807.80, paid by said Joint Stock Land Banks, respectively, on their bonds issued and outstanding in the hands of the public, was deducted as [fol. 2] "interest paid or accrued within the taxable year on its indebtedness" under Section 234 (a) (2) of Title II of the Revenue Act of 1921. Said deduction was disallowed by the Commissioner of Internal Revenue on the ground that said interest fell within the exception clause of said Section 234 (a) (2) which reads in full as follows:

"Sec. 234. (a) That in computing the net income of a corporation subject to the tax imposed by Section 230 there shall be allowed as deductions:

(2) All interest paid or accrued within the taxable year on its indebtdeness,

except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this title."

Question Presented

The single question at issue is whether interest paid by a Joint Stock Land Bank on its Joint Stock Land Bank bonds, issued to create a fund to make, and out of which are made, loans to farmers, in contemplation of the Federal Farm Loan Act, on the security of qualified first mortgages as defined in said Federal Farm Loan Act, is deductible from income under Section 234 (a) (2) of Title II of the Revenue Act of 1921, quoted above.

The case was heard on a stipulation of facts which was adopted by the Court of Claims as its special findings of fact.

This question, in one aspect, involves the interpretation of

(1) the purpose, scope and language of the exception clause of Section 234 (a) (2) of Title II of the Revenue Act of 1921.

[fol. 3] (2) the purpose of Congress in passing the Federal Farm Loan Act of July 17, 1916, and the relation thereof to the exception clause of said Section 234 (a) (2); and

(3) the scope and language of the "interest exemption section",—Section 213 (b) (4) (b) (particularly sub-section (b) thereof) of Title II of the Revenue Act of 1921, which reads as follows:

"Section 213. That for the purpose of this title (except as otherwise provided in Section 233) the term 'gross income', (b) does not include the following items, which shall be exempt from taxation under this title: (4) Interest upon

(a) the obligation of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (b) securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916; or (c) the obligations of the United States or its possessions; or (d) bonds issued by the War Finance Corporation. In the case of obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit), and in the case of bonds issued by the War Finance Corporation, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt to the taxpayer from income, war profits and excess profits taxes."

and, in its other aspect, involves the constitutionality of the exception clause in respect of interest deduction.

Reasons for Allowing this Petition

1. This is a "class" case and presents precisely a single question of law, the decision, of which will control several pending suits and many claims and questions of tax liability involving numerous taxpayers. These claims are recurrent in each year in respect of each of such taxpayers inasmuch as the law of 1921 controlling this question has [fol. 4] remained unchanged. An authoritative determination of this question will automatically decide pending cases, claims and questions of tax liability of these several taxpayers over a period of ten years, approximately, involving relatively large amounts of taxes.

2. The Court of Claims erroneously construed farmers' mortgage notes to be "securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916" as such phrase is used in Section 213 (b) (4) (b) of the Income Tax Law of 1921.

3. The Court of Claims erroneously ignored the question of the constitutionality of the exception clause of said Section 234 (a) (2).

4. Said exception clause has been declared unconstitutional by a Circuit Court of Appeals, in a case now before this Court, under circumstances which, on the application of principles laid down by this Court, would defeat the application of said exception clause to said indebtedness of Joint Stock Land banks.

Wherefore your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Claims of the United States, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be herein named, a full and complete tran-[fol. 5] script of the record and all proceedings in the case numbered and entitled on its docket as J-71, The First National Bank of Chicago vs. United States; and that the said judgment of the Court of Claims may be reversed by this Honorable Court; and that your petitioner may have such other and further relief in the premises as to this Court may seem meet and just; and your petitioner will ever pray.

The First National Bank of Chicago by Harold V. Amboy, Attorney.

[fol. 1] IN THE COURT OF CLAIMS OF THE UNITED STATES

No. J-71

THE FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

against

THE UNITED STATES OF AMERICA

I. PETITION—Filed February 28, 1928

To the Court of Claims of the United States of America and to the Honorable Judges thereof:

The above named claimant, by this, its petition, respectfully shows:

1. The claimant at all times hereinafter mentioned was and is a national banking association organized and exist-

ing under the laws of the United States of America, engaged in the business of banking, and having its principal office at 38 South Dearborn Street, City of Chicago, County of Cook, State of Illinois.

2. The claimant has a just claim for the refund of $9,124.70 in respect of income tax illegally assessed and collected by the Commissioner of Internal Revenue of the United States of America for the period ending December 31, 1922, with interest thereon.

The provision of law under which the claimant claims such refund is Section 234 (a) (2) of the Federal Income Tax Law of 1921, being Title II of The Revenue Act of 1921.

[fol. 2] 3. Pursuant to Sections 239 and 240 of the Federal Income Tax Law of 1921 and the regulations thereunder, the claimant, as parent corporation and taxpayer, made to the Commissioner of Internal Revenue on March 14, 1923 a consolidated return, on official form number 1120, for the year ending December 31, 1922. Included in said consolidated return of the claimant, in addition to itself as parent corporation, were the claimant's affiliated corporations, as follows:

First Trust and Savings Bank, an Illinois corporation, Chicago, Illinois,

First National Investment Company, now First-Chicago Corporation, an Illinois corporation, Chicago, Illinois,

National Safe Deposit Company, an Illinois corporation, Chicago, Illinois,

First Trust Joint Stock Land Bank of Chicago, a joint stock land bank organized under the Federal Farm Loan Act of 1916, with its principal office in the City of Chicago, State of Illinois, and

First Trust Joint Stock Land Bank of Dallas, a joint stock land bank organized under the Federal Farm Loan Act of 1916, with its principal office in the City of Dallas, State of Texas.

4. In said consolidated return of the claimant it reported net income subject to the tax imposed by Section 230 of the Federal Income Tax Law of 1921 for the year 1922 of $3,482,004.88.

In computing said net income the claimant in said return deducted, in contemplation of Section 234 (a) (2) of Title II of The Revenue Act of 1921, in respect of interest paid during said period by the First Trust Joint Stock Land Bank of Chicago and the First Trust Joint Stock Land Bank of Dallas on their outstanding joint stock land bank bonds the aggregate amount for the year 1922 of $78,807.80. Said deduction, as hereinafter more fully set forth, has been disallowed by the Commissioner of Internal Revenue.

[fol. 3] 5. In respect of the Federal income tax based on said original consolidated return the claimant paid (with interest on the deferred payment) to the Collector of Internal Revenue, Chicago, Illinois, on the dates stated below, the following amounts:

March 14, 1923	$108,812.65
June 12, 1923	108,812 66
September 15, 1923	108,812 65
November 13, 1923	104,281 51
June 3, 1926	4,531 14
or a total of	$435,250 61

6. Subsequent to the filing of said original consolidated return the claimant filed with the Commissioner of Internal Revenue certain claims for credit in respect of the period ending December 31, 1922. Acting on the original return and these claims, and recomputing the assessment, but still disallowing said interest deduction, the Commissioner of Internal Revenue, by letter to the claimant dated October 29, 1927, ultimately fixed the taxable net income of the claimant for the year 1922 at $3,446,272.60 and determined the tax due thereon to be $430,784.08, and disclosed, exclusive of the over-assessment by virtue of the disallowance of said interest deduction, an over-assessment of taxes against the claimant for the year 1922 of $4,466.53.

The Collector of Internal Revenue, Chicago, Illinois subsequently refunded said last mentioned amount with interest to your claimant.

7. As set forth above, the claimant in reporting its net income subject to the tax imposed by Section 230 of the

Federal Income Tax Law of 1921, in its original return for the year 1922, deducted interest paid by the First Trust Joint Stock Land Bank of Chicago and the First Trust Joint Stock Land Bank of Dallas on their outstanding joint stock land bank bonds, respectively, amounting to $78,807.80. This deduction was disallowed by the field agent [fol. 4] of the Internal Revenue Department who examined said return of the claimant, and the claimant was notified of such disallowance by letter dated June 10, 1926, from the office of the Supervising Internal Revenue Agent, Chicago Division. The claimant protested such disallowance. The disallowance of said deduction was, over the protest of the claimant, adopted and followed by the Commissioner of Internal Revenue in his so-called 30-day letter dated August 2, 1926, in his so-called 60-day letter dated August 22, 1927, and in his final letter dated October 29, 1927.

In his determination of the taxable income for said period, however, the Commissioner of Internal Revenue allowed as a deduction, in respect of certain inter-company transactions in connection with interest on said joint stock land bank bonds for the year 1922 the amount of $5,810.25 which item the claimant concedes is not deductible in the event the interest paid by said Joint Stock Land Banks on their outstanding joint stock land bank bonds is a deductible item.

The Commissioner of Internal Revenue has illegally denied the claimant a net deduction in respect of its taxable income for said period the amount of $72,997.55 on which amount the Commissioner of Internal Revenue has illegally assessed and collected Federal income tax from the claimant for the year 1922 of $9,124.70.

8. On November 8, 1927, the claimant filed with the Collector of Internal Revenue of Chicago, Illinois, claim for refund of taxes illegally collected for the year 1922 in the sum of $9,124.70. A copy of said claim for refund is attached hereto, marked Exhibit "A" and made a part hereof. Said claim for refund was denied by the Commissioner of Internal Revenue by letter dated February 14, 1928, for the reasons, as set forth in said letter, as follows:

[fol. 5] "It is held that farmers' first mortgage notes executed to joint stock land banks are issued under the pro-

visions of the Farm Loan Act of 1916, that they are securities in the contemplation of Section 213 (B)(4)(B) of the Revenue Act of 1921; that they are acquired by purchase, and that the interest on bonds issued to furnish proceeds for their purchase is interest on an indebtedness incurred to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation under Title II of the Revenue Act of 1921; and as such is not deductible as an expense."

9. No other action than as aforesaid has been had on this claim in Congress or by any of the Departments. The claimant has at all times borne true allegiance to the Government of the United States. It has not, in any way, voluntarily aided, abetted, or given encouragement to rebellion against such Government. It is and always has been the sole and absolute owner of the claim here presented. It has made no transfer or assignment of said claim or of any part thereof or of any interest therein. It is justly entitled to the amount claimed from the United States of America after allowing all just credits and set-offs.

10. The claimant believes the facts as hereinabove stated to be true.

Wherefore, the claimant prays judgment against the United States of America upon the facts and law for $9,124.70 with lawful interest thereon since the date of payment thereof and its reasonable costs and disbursements herein.

The First National Bank of Chicago, Claimant, M. A. Traylor, President. Harold V. Amberg, Attorney for Claimant.

[fol. 6] *Duly sworn to by Melvin A. Traylor. Jurat omitted in printing.*

[fol. 7] EXHIBIT "A" TO PETITION

Treasury Department, Internal Revenue Service,
Comptroller General U. S.

January 18, 1922.

Important.—Not acceptable unless completely filled in.

Claim for Refund of Taxes Illegally Collected

STATE OF ILLINOIS,
County of Cook, ss:

The First National Bank of Chicago and Affiliated Corporations, 38 South Dearborn Street, Chicago, Illinois.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

	Period	Year
From	Jan. 1	1922
To	Dec. 31	1922

1. Business in which engaged: Banking.
2. Character of assessment or tax: Income Tax.
3. Amount of assessment or stamps purchased: $435,250.61.
6. Amount to be refunded (or such greater amount as is legally refundable): $9,124.70.

Deponent verily believes that this application should be allowed for the following reasons:

Deduction of interest paid by the First Trust Joint Stock Land Bank, Chicago, Ill., and the First Trust Joint Stock Land Bank, Dallas, Texas, on their own bonds, respectively, as per statement attached, was disallowed. This interest is deductible interest under section 234 (a)(2) of Title II of the Revenue Act of 1921, inasmuch as it does not fall within the exception in respect of interest "on indebtedness incurred or continued to purchase or carry ob-
[fol. 8] ligations or securities * * * the interest on which is wholly exempt from taxation under this title."

The interest does not fall within the excepted class of section 234(a)(2) in that, among other reasons, the interest on first mortgage farm loans is not "exempt from taxation

under this title" (Title II of the Revenue Act of 1921) because its exemption is derived solely from section 26 of the Federal Farm Loan Act. The interest exemptions of section 213(b)(4) of Title II of the Revenue Act of 1921 supplies no exemption inasmuch as the farmers' first mortgage notes are not securities "issued under the provisions of the Federal Farm Loan Act of July 17, 1926." The interest paid by these Banks on their bonds is, therefore, deductible interest.

(Signed) John P. Oleson, Vice President.

Sworn to and subscribed before me this 8th day of November, 1927. Edgar J. Harris, Jr., Notary Public. My commission expires July 23, 1931.

(Exhibit A continued next page)

[fol. 9] (Exhibit A Continued)

U. S. Income and Excess Profits Tax

Claim for Refund, Year 1922

Net Income Revised:

Income as assessed in adjustment of 60-day letter		$3,446,272.60
Corrected Income		3,373,275.05
Deduction (A)		72,997.55

(A) Net Interest paid on First Trust Joint Stock Land Bank bonds disallowed as a deduction

Explanation of Items changed

Interest paid on bonds:		
First Trust Joint Stock Land Bank, Chicago	$70,474.47	
First Trust Joint Stock Land Bank, Dallas	8,333.33	
	78,807.80	
Less Interest received on First Trust Joint Stock Land Bank Bonds as inter-company transaction: First Trust and Savings Bank	5,810.25	
		72,997.55

Computation of Tax

Corrected Net Income		$3,373,275.05
Tax at 12½%		421,659.38
Taxes Paid:		
Mar. 14, 1923	$108,812.65	
June 12, 1923	108,812.66	
Sept. 15, 1923	108,812.65	
Dec.-15, 1923 Credit A/C former years	108,812.65	
Oct. 29, 1927—Refund allowed in settlement of 60-day letter claim as per conference September 19, 1927	4,466.52	
		430,784.08
Refund Claimed		9,124.70

[fol. 10] II. General Traverse—Filed April 7, 1928

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Herman J. Galloway, Assistant Attorney General.

D. E. R.

III. History of Proceedings

On March 19, 1929, this case was argued and submitted on merits by Mr. Harold V. Amberg, for plaintiff, and by Mr. Henry A. Cox, for defendant.

On May 6, 1929, the court filed findings of fact and conclusion of law, and entered judgment for plaintiff in the sum of $9,124.70, with interest, with an opinion by Moss, J., and dissenting opinion by Green, J.

On June 28, 1929, the defendant filed a motion for a new trial.

On December 2, 1929, the court entered the following order on said motion:

Order

It is ordered this 2d day of December, 1929, that the defendant's motion for new trial be and the same is allowed. The findings of fact, judgment and opinion filed herein May 6, 1929, are vacated, set aside and withdrawn and the case placed on the Trial Calendar.

By the Court.

IV. Argument and Submission on New Trial

On January 14, 1930, this case was argued and submitted on new trial by Mr. Harold V. Amberg, for plaintiff, and Mr. Henry A. Cox, for defendant.

[fol. 11] V. **Special Findings of Fact, Conclusion of Law, and Opinion of the Court by Williams, J.**—Filed March 3, 1930

Mr. Harold V. Amberg for plaintiff. Messrs. Robert N. Miller, J. Robert Sherrod, and John E. McClure, by leave of the Court, filed a brief as amici curiæ.

Mr. H. A. Cox, with whom was Mr. Assistant Attorney General Herman J. Galloway, for the defendant. Mr. C. M. Charest and Mr. Dwight E. Rorer were on the brief.

The only question involved in this suit is whether interest paid by a joint-stock land bank on its joint-stock land bank bonds, the proceeds of which are used to make loans to farmers, under the provisions of the Federal farm loan act of July 17, 1916, on the security of approved first mortgages as defined in said act, is deductible in computing the taxable income of such joint-stock land bank under section 234 (a) (2) of Title II of the revenue act of 1921.

This case having been heard by the Court of Claims, upon a stipulation of facts, signed on behalf of plaintiff by its attorney, Harold V. Amberg, and on behalf of the defendant by Assistant Attorney General Herman J. Galloway, and the evidence, the court makes the following

Special Findings of Fact

1. At all times herein mentioned, the plaintiff, the First National Bank of Chicago, was and now is a national banking association organized and existing under and by virtue of the laws of the United States of America, engaged in the business of banking, and having its principal office at 38 South Dearborn Street, city of Chicago, county of Cook, State of Illinois.

2. On or about March 14, 1923, plaintiff filed with the collector of internal revenue for the first district of Illinois a tentative consolidated corporation income and profits tax return for the calendar year 1922, said return disclosing an estimated consolidated net income of $3,482,004.88 and an estimated income and profits tax liability of $435,250.61. On or about June 13, 1923, plaintiff filed a completed consolidated corporation income and profits tax return for the [fol. 12] calendar year 1922, said return consolidating the income of the plaintiff corporation and the following affiliated corporations:

First Trust and Savings Bank, an Illinois corporation, Chicago, Illinois.

First National Investment Company, now First-Chicago Corporation, an Illinois corporation, Chicago, Illinois.

National Safe Deposit Company, an Illinois corporation, Chicago, Illinois.

First Trust Joint Stock Land Bank of Chicago, a joint-stock land bank organized under the Federal farm loan act of 1916, with its principal office in the city of Chicago, Illinois.

First Trust Joint Stock Land Bank of Dallas, a joint-stock land bank organized under the Federal farm loan act of 1916, with its principal office in the city of Dallas, Texas.

Such consolidated return disclosed a net income of $3,482,004.88 and a total tax liability of $435,250.61.

In computing said net income the plaintiff deducted the amount of $78,807.80 as being interest paid during the year 1922 on joint-stock land bank bonds of the First Trust Joint Stock Land Bank of Chicago and the First Trust Joint Stock Land Bank of Dallas, but said deduction was disallowed by the Commissioner of Internal Revenue.

3. Plaintiff paid to said collector of internal revenue said amount of $435,250.61 as follows:

March 15, 1923	$108,812.65
June 13, 1923	108,812.66
September 15, 1923	108,812.65
Credit in 1926, ITA 19366 (overassessment 1919)	49,827.89
Credit in 1926, ITA 19366 (overassessment 1920)	53,789.97
May 22, 1926	663.65
June 1, 1926	4,531.14
	435,250.61

4. Subsequent to the filing of said completed consolidated return, plaintiff, on or about March 5, 1924, filed with the collector of internal revenue at Chicago, Illinois, a claim for credit and on or about March 12, 1925, filed a claim for refund.

On or about November 11, 1927, the aforesaid claim for refund was rejected and the aforesaid claim for credit was partially allowed in the amount of $4,466.53, but this allowance was not based upon any ground set up or alleged in this suit.

Plaintiff's total tax liability for the year 1922 was redetermined to be $430,784.08, which amount is less than the tax previously paid by $4,466.53. A certificate of overassessment was issued therefor, and the said amount of $4,466.53 was refunded on Schedule FT; 27612.

5. On or about November 25, 1927, plaintiff filed a claim for refund in the amount of $9,124.70 based upon the disallowance as a deduction from income of interest paid by the First Trust Joint Stock Land Bank of Chicago and the First Trust Joint Stock Land Bank of Dallas.

In the determination of taxable net income for said year the Commissioner of Internal Revenue allowed as a deduction, in respect of certain intercompany transactions in [fol. 13] connection with interest on said joint-stock land bank bonds the amount of $5,810.25 which item plaintiff concedes is not deductible provided the interest paid by said joint-stock land banks on their outstanding joint-stock land bank bonds is held to be a deductible item.

Said claim for refund was denied by the Commissioner of Internal Revenue by letter dated February 14, 1928, for the reasons set forth in said letter as follows:

"It is held that farmers' first mortgage notes executed to joint-stock land banks are issued under the provisions of the farm loan act of 1916, that they are securities in the contemplation of Section 213 (b) (4) (b) of the revenue act of 1921; that they were acquired by purchase, and that the interest on bonds issued to furnish proceeds for their purchase is interest on an indebtedness incurred to purchase or carry obligations or securities; the interest upon which is wholly exempt from taxation under (Title II of the revenue act of 1921, and as such is not deductible as an expense."

6. The alleged interest expense was incurred as hereinafter more particularly shown:

The First Trust Joint Stock Land Bank of Chicago and the First Trust Joint Stock Bank of Dallas, which were organized under the Federal farm loan act of July 17, 1916, issued to and/or had outstanding in the hands of the public in the year 1922 their joint-stock land bank bonds, respectively, on which interest was paid and/or accrued in the year 1922, in the aggregate sum of $78,807.80, part of which was the intercompany transaction in the amount of $5,810.25, leaving a balance paid or accrued of $72,997.55. As security for the payment of said joint-stock land bank bonds said joint-stock land banks, as provided in the Federal farm loan act, deposited with the proper farm loan registrars farmers' promissory notes evidencing loans to said farmers, which in turn were secured as to payment by said farmers' first mortgages on their farms.

The proceeds coming into the hands of said joint-stock land banks from the issuance and sale of said joint-stock land bank bonds were used by said joint-stock land banks to make new additional loans to farmers, which new loans, made from the proceeds of said joint-stock land bank bonds issued and/or outstanding in 1922, were made in each instance in consideration of the making and delivery by the borrowing farmers, respectively, of their promissory notes secured as to payment by first mortgages on their farms.

All of said loans, respectively, and the farmers' notes and mortgages, respectively, evidencing said loans, were designed to be and were of such a nature as to comply with (1) all the terms, conditions, restrictions, limitations, and requirements specified in the Federal farm loan act, as requisite to qualify said loans, notes, and mortgages, as "first mortgages" in contemplation of said act, so as to make them available as collateral security against the issue of joint-stock land bank bonds; and (2) all terms, conditions, restrictions, limitations, and requirements, statutory or otherwise, specified in the laws of the State in which the farm which was the subject of the particular loan was located (to wit, the States of Illinois, Iowa, Texas, and Oklahoma, respectively), as requisite to qualify said loans, notes, and mortgages as valid and subsisting first mortgages, in contemplation of such laws. Said notes and mortgages contain an agreement providing for the repayment of the loan on the amortization plan, as provided in section [Vol. 14] 12, second, of the Federal farm loan act, and such agreement in respect of each note and/or mortgage was such that the respective note and/or mortgage was not extinguished within a period of less than thirty-three years, except, of course, at the option of the borrower.

The interest received by the plaintiff on such farmers' notes and mortgages was not taxable as income to the plaintiff and was not so taxed in respect of plaintiff's return for the year 1922.

7. Plaintiff has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government; is the sole and absolute owner of the claim herewith presented; and has made no transfer or assignment of said claim or any part thereof.

Conclusion of Law

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover and its petition is therefore dismissed.

Judgment is rendered against plaintiff for the cost of printing the record herein, the amount thereof to be ascertained by the clerk and collected by him.

Opinion

Williams, Judge, delivered the opinion of the court:

Decision in this case was originally rendered in favor of the plaintiff on May 6, 1929. A motion for new trial having been made by the defendant and granted, and the judgment vacated and the findings of fact and opinion withdrawn, the case is again before the court for consideration on merits.

The plaintiff seeks to recover the sum of $9,124.70, an alleged overpayment of its income and profits taxes for the year 1922.

The facts have been stipulated and the sole question to be determined is one of law, that is, whether or not interest paid by joint-stock land banks on their joint-stock land bank bonds is deductible from income, under section 234 (a) (2) of Title II, of the revenue act of 1921, 42 Stat. 254.

The plaintiff, the First National Bank of Chicago, filed for the year 1922 a consolidated income and profits tax return, which return consolidated the income of plaintiff and the following affiliated corporations:

First Trust and Savings Bank, an Illinois corporation, Chicago, Illinois.

First National Investment Company, now First-Chicago Corporation, an Illinois corporation, Chicago, Illinois.

National Safe Deposit Company, an Illinois corporation, Chicago, Illinois. First Trust Joint Stock Land Bank of Chicago, a joint-stock land bank organized under the Federal farm loan act of 1916, with its principal office in the city of Chicago, Illinois.

First Trust Joint Stock Land Bank of Dallas, a joint-stock land bank organized under the Federal farm loan act of 1916, with its principal office in the city of Dallas, Texas. [fol. 15] In computing its income plaintiff deducted the amount of $78,807.80, this amount being interest paid during the year 1922 on joint-stock land bank bonds of the First Trust Joint Stock Land Bank of Chicago and the First Trust Joint Stock Land Bank of Dallas.

The Commissioner of Internal Revenue disallowed said deduction. A timely claim for refund was filed and rejected, and this action is brought for the recovery of the amount claimed on account of the disallowance of the right to deduct said interest, to wit, $9,124.70.

The First Trust Joint Stock Land Banks of Chicago and of Dallas were organized under the Federal farm loan act of July 17, 1916, 39 Stat. 360, and the bonds in question were issued and sold to the public in accordance with the provisions of said act, and they were secured as required by said act by the deposit, with the proper farm loan registrars, of farmers' promissory notes, which in turn were secured by first mortgages on the borrowing farmers' land. The proceeds derived by the joint-stock land banks from the issue and sale of said bonds were used in making new loans to farmers, which were secured in precisely the same manner as hereinabove stated. Interest received by plaintiff on the farmers' notes and mortgages was not taxable as income, and was not so taxed for the year 1922. Interest on the said joint-stock land bank bonds is not taxable as income and the holders of such bonds were not taxed on such income for the year 1922. The farmers' notes and mortgages provide for the payment of the loan on an amortization plan, as provided in section 12 of the Federal farm loan act, covering a period of thirty-three years, except, at the option of the borrowing farmer, it may be paid sooner. Joint-stock land banks are not permitted to engage in any business, except that of making loans to farmers and issuing bonds.

Section 234 of the revenue act of 1921 reads:

"(a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

* * * * * * *

"(2) All interest paid or accrued within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities * * * the interest upon which is wholly exempt from taxation under this title."

Neither the Joint Stock Land Bank of Chicago, nor the Joint Stock Land Bank of Dallas had any taxable income for the year 1922, and neither of these institutions as such paid income or profits taxes for that year. The question of the deductibility of the interest paid by them on their out-

standing bonds arises solely because of their affiliation during the year with plaintiff and other corporations having taxable incomes, and the deduction is sought from their consolidated income. This fact, of course, does not affect the right of the plaintiff to have the deduction claimed if the joint-stock land banks with which it was affiliated during the year would have had a right to the deduction had they filed individual returns for the year.

Joint-stock land banks, not being permitted to engage in any business, except that of making loans to farmers and issuing their bonds to procure the necessary funds therefor, [fol. 16] do not ordinarily have income subject to taxation, and so long as such banks operate as individual and separate institutions, it can not make the slightest difference whether they have or do not have the right to deduct the interest paid on their bonds. Their income is tax exempt, and consequently the right to make deductions therefrom means nothing. When, as in the instant case, joint-stock land banks are affiliated with banking corporations that do have taxable incomes, the question assumes importance, as the interest deduction, if allowed, reduces the tax liability of the affiliated group—even then, however, it in no way affects the joint-stock land banks included in such consolidation. They have no taxable income and they pay no taxes. The plaintiff contends, (1) that the interest deduction denied in respect of indebtedness incurred or continued to purchase or carry obligations or securities, the interest upon which is wholly exempt from taxation under this title, has no reasonable relation or logical application to indebtedness incurred by joint-stock land banks on their bonds to provide funds to make loans to farmers on their "first mortgages" in contemplation of the Federal farm loan act, and there is no reasonable ground on which to attribute any contrary intent to Congress. (2) That the face value construction of the exception clause, to the effect that such indebtedness of joint-stock land banks is not "indebtedness incurred or continued to purchase or carry obligations or securities, the interest upon which is wholly exempt from taxation under this title," is simple, direct, and unambiguous. (3) To class a joint-stock land bank indebtedness on its bonds as "indebtedness incurred or continued to purchase or carry obligations or securities, the interest

upon which is wholly exempt from taxation under this title," imputes to the Congress an intent which is inconsistent with the clear intent manifested by the Congress in the Federal farm loan act.

It is particularly urged that—

(a) The loaning of money by joint-stock land banks to farmers on their "first mortgage" security is not a "purchase or carry" in contemplation of the interest deduction exception clause, section 234 (a) (2), and consequently the exception is not applicable to such indebtedness of joint-stock land banks represented by their bonds.

(b) The indebtedness of joint-stock land banks represented by their bonds is not incurred or continued to "purchase or carry obligations and securities the interest upon which is wholly exempt from taxation under this title" in that the only possible exemption under this title would be on the theory that "first mortgage" notes executed to joint-stock land banks, evidencing loans to farmers, are "securities issued under the provisions of the Federal farm loan act" in contemplation of section 213 (b) (4) (b), and such "first mortgage" notes are not "securities issued under the provisions of the Federal farm loan act.

(c) "Obligations or securities" in contemplation of the interest deduction exception clause are, in any event, only such obligations or securities as are designated in the interest exemption clause, section 213 (b) (4). Farmers' mortgage notes evidencing such loans to them by joint-stock land banks do not fall within the "obligations" or [fol. 17] "securities" designated in the interest exemption clause, section 213 (b) (4) (b). Consequently, the indebtedness of the joint-stock land banks incurred to provide funds to make such loans to farmers is not incurred to purchase or carry "obligations or securities" in contemplation of section 234 (a) (2), and therefore the interest on such indebtedness is deductible, irrespective of the source of the exemption granted in respect of interest paid to joint-stock land banks on such farmers' first mortgage notes.

(d) The interest deduction exception phrase "exempt from taxation under this title" is the equivalent of "exempt (from taxation) under this title," referring to ex-

emptions contained in interest exemption section 213 (b), (4) (b) and applies as set forth in (b) above.

Bonds issued by joint-stock land banks constitute "indebtedness" of such banks. This indebtedness is incurred and continued by the banks to procure funds to loan to farmers on their notes secured by first mortgages, the interest of which is wholly tax exempt.

The question is, Does this "indebtedness" of the joint-stock land banks constitute an indebtedness incurred or continued to purchase or carry the notes and first mortgages of borrowing farmers?

The plaintiff contends that it does not. That lending money to farmers on long-time loans, secured by notes and mortgages, is not the purchasing and carrying of such notes and mortgages.

"Purchase" is defined by Webster's New International Dictionary as—

"(2) Law: Technically, to acquire (real estate) by any means whatever other than descent or inheritance.

"(3) To obtain (anything) by paying money or its equivalent; the acquisition of title to, or property in, anything for a price; buying for money or its equivalent."

By the New Standard Dictionary as—

"Purchase: (1) To obtain or secure as one's own by paying or promising to pay a price. (3) Law: (1) To acquire (property) by one's own act or agreement, as distinguished from the act or mere operation of law.

"Synonym: Acquire; bargain for; barter for; get; obtain; procure; secure."

"The term 'purchase' in its general signification, and which is the legal sense of it, includes all modes of acquiring property except by descent, and it embraces a devise." McCartee v. Orphans' Asylum (N. Y.), 9 Cow. 437.

"The payee of a note is the purchaser thereof, if he advances money or otherwise parts with valuable consideration therefor." 8 C. J. 468, 469, 470.

The word "carry" is defined in Words and Phrases, vol. I, 2d series, page 577, as follows:

"The term 'carry' as used in a contract by which one of the parties to a contract for the purchase of a patent right agreed to 'carry' the interest of another party who was to have a part interest therein, means 'advance' the money to

pay his interest. (Mann v. Urquhart, 116 Sw. 219, 222.)"

Webster's International Dictionary contains the following definition:

[fol. 18] "16 Com. To bear the charges or burden of holding or having, as stocks, merchandise, etc., from one time to another; to keep on one's books as a debtor * * * to bear * * * to support."

New Standard Dictionary defines the word "carry":

"10. To keep on hand; maintain; keep up; support; hold; as to carrying a full stock; to carry life insurance."

The words purchase or carry, in our opinion, unless they are to be given a technical meaning different from that in which they are ordinarily used, are apt words and characterize precisely the acquisition of and the holding of farmer's notes and mortgages by joint-stock land banks. We think, therefore, the bonds of joint-stock land banks constitute indebtedness incurred and continued to purchase and carry the tax-exempt notes and mortgages of farmers executed and issued under the provisions of the Federal farm loan act of 1916.

The plaintiff next contends that the notes and mortgages of farmers given and executed under the provisions of the Federal farm loan act are not "obligations" or "securities" within the meaning of the exception to the interest-deduction clause of section 234 of the 1921 revenue act.

"Obligations is a generic word, and includes all kinds of contracts by which contracting parties bind themselves, and, in the absence of limiting words or the connection in which it is used, will be construed in its generic sense." (Sinton v. County of Carter, 23 Fed. 535.)

"The word 'obligations' has a very broad and comprehensive legal signification and embodies all instruments of writing, however informal, whereby one party contracts with another for the payment of money or the delivery of specific articles. Bouvier's Law Dictionary." State v. Campbell, 103 N. C. 344; Morrison v. Lovejoy, 6 Minn. 353 (Gil. 224).

"Securities" is defined by standard authorities as follows:

Webster's New International Dictionary:

"Security—That which secures or makes safe. Specif.: something given, deposited, or pledged; to make secure or

certain; or certain the fulfillment of an obligation; the payment of a debt. Specif.: An evidence of debt or of property, as a bond; a stock certificate or other instrument, etc.; a document giving the holder the right to demand and receive property not in his possession."

Abbott's Law Dictionary:

"Securities (plural)—Is in use as a general term for written assurances for payment of money; evidences of debt."

Black's Law Dictionary:

"Security—The term is usually applied to an obligation, pledge, mortgage, deposit, lien, etc.; given by a debtor in order to make secure the payment or performance of his debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligations."

If the language of the interest-deduction clause, and the exception therein, left any doubt whatever, that the first mortgage notes are securities, that doubt is completely removed by the plain language of the Federal farm loan act under the provisions of which such first mortgages are ac- [fol. 19] quired by joint-stock land banks, as they are clearly designated in the act itself as securities.

Section 18 of the act provides:

"That any Federal land bank or joint-stock land bank, which shall have voted to issue farm loan bonds under this act, shall make written application to the Federal Farm Loan Board, through the farm loan registrar of the district, for approval of such issue. With said application said land bank shall tender to said farm loan registrar as collateral security first mortgages on farm lands qualified under the provisions of section twelve, section fifteen, or section sixteen of this act, or United States Government bonds, not less in aggregate amount than the sum of the bonds proposed to be issued. Said bank shall furnish with such mortgages a schedule containing a description thereof and such further information as may be prescribed by the Federal Farm Loan Board.

"Upon receipt of such application said farm loan registrar shall verify said schedule and shall transmit said application and said schedule to the Federal Farm Loan Board, giving such further information pertaining thereto as he may possess. The Federal Farm Loan Board shall

forthwith cause to be made such investigation and appraisement of the securities tendered as it shall deem wise, and it shall grant in whole or in part, or reject entirely, such application."

While bonds of the Government of the United States are authorized to be tendered and used as collateral security for farm-loan bonds, it is a matter of common knowledge that they are not so used by joint-stock land banks for that purpose to any appreciable extent.

The record discloses that farmers' notes and first mortgages were the only collateral security tendered by the Joint Stock Land Banks of Chicago and Dallas, with their various applications to the Federal Farm Loan Board for authority to issue farm-loan bonds. They were the only securities which the Federal Farm Loan Board under the provisions of section 18 of the Federal farm loan act could investigate and appraise in passing upon and approving applications to issue the bonds in question. If plaintiff's contention is correct that these notes and first mortgages are not securities within the meaning of the Federal farm loan act no investigation or appraisement of securities tendered was ever made by the Federal Farm Loan Board in passing upon the applications of the Joint Stock Land Banks of Chicago and Dallas to issue farm-loan bonds, because no securities were ever tendered. To direct the Federal Farm Loan Board to investigate and appraise the securities tendered as collateral security for farm-loan bonds, and then say that farmers' first notes and mortgages, which constitute the only collateral security tendered, as was the case here, are not securities within the meaning of the Federal farm loan act amounts to an absurdity. The framers of a statute are presumed to know and understand the meaning of the words used, and where the language used is clear and free from ambiguity, and not in conflict with other parts of the same act, the courts must assume the legislative intent to be what the plain meaning of the words used import.

[fol. 20]. That Congress intended to make the notes and first mortgages of borrowing landowners, securities, by the language used in section 18 of the Federal farm loan act, is quite clear from other provisions of the act and by the essential functions they perform in the whole scheme of the

joint-stock land bank system. Farmers' notes and first mortgages are repeatedly referred to in the act as collateral security, and in section 26 of the act they are placed on the same basis and given the same legal status as the farm-loan bonds issued under the provisions of the act.

Section 26 reads:

"First mortgages executed to Federal land banks, or to joint-stock land banks, and farm-loan bonds issued under the provisions of this act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation."

The farm-loan bonds are evidences of indebtedness of the joint-stock land banks. The farmers' notes and mortgages are evidences of indebtedness of borrowing farmers. They are of equal importance in the operation of joint-stock land banks, and they are each made instrumentalities of the Government of the United States in the act providing for the creation of such banks.

The function of these two instrumentalities in the operation of the joint-stock land bank system is well stated in an opinion of Attorney General T. W. Gregory (Opinions of Attorneys General, Volume 31, 105):

"I do not deem it necessary to analyze the act in detail. It is sufficient to say that the mortgages and farm-loan bonds are of the very essence of the system created by it. The original capital of the Federal land banks is to be loaned, through the agency of national farm-loan associations, to bona fide cultivators of the soil on first mortgages on farm lands. When a sufficient amount in such mortgages has accumulated, they are to be turned over to a 'registrar' appointed by the Farm Loan Board, and with the approval of the board, farm-loan bonds are issued by the land bank and sold. With the proceeds further loans are made on mortgages, which mortgages in their turn become the basis of an additional issue of bonds. This continuous flow and reflow of mortgages and bonds constitutes the prime function of the whole system."

The provisions of section 18 of the Federal farm loan act designating these instrumentalities of the Government of

the United States (farmers' notes and first mortgages) securities are in harmony with the manifest intent of the other provisions of the act and of the whole scheme underlying the creation and operation of joint-stock land banks.

We are of the opinion that the notes and first mortgages owned and held by joint-stock land banks, and used by them as collateral security for the payment of their bonds, are securities under the provisions of the Federal farm loan act of 1916, and that as such the interest upon them is specifically exempted from taxation under section 213 (b) (4) of the revenue act of 1921. It follows that under the provisions of section 234 (a) (2) of that act the interest paid by [fol. 21] joint-stock land banks on their farm-loan bonds, which is indebtedness incurred, and continued to purchase and carry such securities, come within the exception and is not deductible from income.

The plaintiff urges the deduction of the interest paid on its farm-loan bonds should not be denied for the reason that such denial tends to thwart or defeat the purposes sought to be attained in the enactment of the Federal farm loan act, to wit, to enable farmers to obtain long-time loans on the security of their lands at reasonable rates of interest. It is contended denial of the deduction sought would impose a burden on the joint-stock land banks contrary to the intent of the Federal farm loan act and not contemplated in the exception to the interest-deduction clause of section 234 (a) (2).

Three agencies are created by Congress under the provisions of the Federal farm loan act to carry out the purposes of the act, the Federal farm banks, national farm-loan associations and joint-stock land banks. The national farm-loan associations are local organizations of landowners who desire to borrow money on their lands from Federal farm banks.

The provisions of the act provide that the Continental United States, excluding Alaska, shall be divided by the Federal Farm Loan Board into twelve Federal land-bank districts, in each of which districts shall be established one Federal farm-land bank. Each Federal farm bank is required to have a minimum capital stock of $750,000.00. The capital stock is divided into shares of five dollars each and may be subscribed for and held by any individual, firm, or

corporation, or by the government of any State or of the United States. It is provided that in case the capital stock of a Federal farm bank is not subscribed within thirty days after the books of such banks are opened for subscription for its stock, it shall be the duty of the Secretary of the Treasury to subscribe the balance thereof on behalf of the United States. An appropriation of one hundred million dollars was provided in the act for the purpose of carrying into effect the provisions of the act. Practically all the capital stock of the twelve Federal land banks was subscribed by the Secretary of the Treasury and carried by the Government.

Joint-stock land banks are organized on a basis entirely different from that of the Federal farm banks. The Government of the United States is expressly prohibited from subscribing to or purchasing any of their capital stock.

There are no requirements as to the location of joint-stock land banks nor any limitation on the number that may be organized. They may be organized on the application of any number of natural persons not less than ten and with a capital stock not less than $250,000.00.

It is true, as contended by the plaintiff, the creation of joint-stock land banks was authorized on the theory that they would serve as useful agencies in accomplishing the primary purposes of the farm loan act.

However, the sole purpose of the stockholders of joint-stock land banks is to make profits out of their invested capital. It was the intent of the farm loan act that these banks should be profit-making institutions. Unless investors could make profits there would be no inducement to them to furnish the capital required for the organization of such banks, and obviously they would not be or-
[fol. 22] ganized. In order that they might be profit-earning institutions, Congress in the farm loan act conferred on joint-stock land banks benefits and privileges never before given to any corporation, agency, or institution financed by private capital and organized and operated for profit.

Joint-stock land banks are permtited to do two things, and nothing else—loan money to farm owners, secured by first mortgages on their land, and to issue and sell farm-loan bonds.

The interest received by the banks on the notes and mortgages of borrowing farmers to whom they loan money is

exempt from all taxation. The interest on their outstanding bonds is exempt from taxation. They are permitted to receive interest on loans to farmers to the extent of one per cent in excess of the rate of interest paid by them on their bonds. Being permitted to issue bonds and make loans to fifteen times the amount of their capital stock, they have a possible maximum annual profit of fifteen per cent on their invested capital, less expenses of operation. In addition to this they are exempted from many of the restrictions imposed in the farm loan act on the Federal farm banks as to interest, the amount of money that may be loaned to a single borrower, the per cent of the valuation that may be loaned upon, etc.

It will be seen that these joint-stock land banks, so far as their stockholders are concerned, are corporations which are organized for profit, and when managed and operated in the manner contemplated in the farm loan act they can not be otherwise than highly profitable.

The value of the privileges and exemptions they enjoy under the law when compared with investment corporations organized as a private business for the purpose of making farm loans is strikingly evident.

The interest received by a private corporation on its loans would be taxable, and if it issued and marketed bonds upon its loans to obtain more money to reloan, the income from its bonds would be subject to Federal taxation, and both the principal and the interest would be subject to State taxation against the holders thereof.

It was believed at the time of the enactment of the farm loan act, as shown by reports of committees in the House and Senate, and by the debates in both Houses of Congress, that these exceptional advantages and benefits would enable the joint-stock land banks to practically monopolize the farm-loan investment field. If these banks have not been as prosperous in all cases as was anticipated by Congress at the time the law was enacted, as has been intimated in argument, is not a matter for consideration here. The undoubted purpose of Congress was to create a system of rural credits that would insure long-term loans to farm owners at a low rate of interest. To assist in accomplishing this purpose Congress gave to the joint-stock land banks privileges and exemptions that would make invest-

ment in the capital stock of the banks inviting and profitable.

These liberal provisions of the farm loan act, it is contended, indicate the intent of Congress, that interest paid by these banks on their farm loan bonds does not come within the intent and meaning of the exception to the interest-deduction clause of section 234 (a) (2) of the revenue act of 1921, and that holding it does come within the exception is contrary to the manifest intent and purposes of the farm loan act itself. We do not agree with this contention and we find nothing in the provisions of the farm [fol. 23] loan act to indicate any intent on the part of Congress that joint-stock land banks should be given any benefits or exemptions other than those specifically set out in the act. Congress exempted from taxation of every kind and character the income derived by these banks on loans made by them to landowners and also made the interest on the bonds issued by them wholly tax exempt to the holders thereof in every respect, and made it possible for them to earn profits on fifteen times the amount of their invested capital. These generous provisions afford no valid or logical reason, in our opinion, for construing the meaning of section 234 (a) (2) of the revenue act of 1921 in any manner other than by giving to the language of the clause the effect which the plain and obvious meaning of the words used convey. The fact that Congress in the farm loan act gave generous and unusual benefits and exemptions to joint-stock land banks does not indicate the purpose or intent of Congress that they should enjoy other benefits and exemptions not given in the act.

Construing the language of the exception to the interest-deduction clause in section 234 (a) (2) to mean what the words used import deprives the plaintiff of no benefit the provisions of the farm loan act accord to it. On the other hand, to give the language used the construction contended for by the plaintiff would give to it a benefit nowhere granted in the act.

Plaintiff contends that the purpose of the exception in the interest-deduction clause of section 234 (a) (2) was to forestall deliberate tax avoidance by taxpayers. That is, it was to prevent taxpayers incurring indebtedness to purchase tax-exempt securities and thereby get in addition to

the exemption of interest received on such securities a deduction of the interest paid on the indebtedness so incurred; that the interest deduction should be disallowed only in those cases where the indebtedness is incurred with a view to tax avoidance. The plaintiff claims the indebtedness incurred by joint-stock land banks on their bonds is not an indebtedness incurred with a view to tax avoidance, and that the banks are therefore entitled to deduct the interest paid on such indebtedness.

There is no doubt that to forestall tax avoidance was one of the purposes sought to be accomplished in the enactment of the exception in the interest-deduction clause. However, the congressional intent to deny the interest deduction only where the indebtedness was incurred by the taxpayer for the purpose of tax avoidance is not expressed either directly or indirectly in the language used in the exception. The language of the interest-deduction clause including the exception is both explicit and comprehensive.

"It is a fundamental rule of statutory construction that the intent of the lawmaker is to be found in the language of the statute." (Goldenberg v. United States, 168 U. S. 95.)

"To get at the thought or meaning expressed in a statute, * * *. the first resort, in all cases, is to the natural significance of the words, in the order of the grammatical arrangements in which the framers * * * have placed them. If the words carry a definite meaning which involves no absurdity, nor any contradiction of other parts of the instrument, then that meaning apparent on the face must be accepted." (Lake Co. v. Rollins, 130 U. S. 670.)

There is no ambiguity in the language used in section 234 (a) (2). The meaning of the words used is clear and [fol. 24] free from doubt. Deduction may be had of "all interest paid or accrued within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this title," as income to the taxpayer.

The language of the exception is general and in our opinion denies to a taxpayer the right of deduction of interest paid on indebtedness incurred or continued for the

purpose of enabling the taxpayer to purchase or carry tax-exempt obligations or securities without regard to the reasons actuating the taxpayer in incurring such indebtedness.

The construction urged by the plaintiff if adopted by the court would in effect require the court to rewrite the exception to the interest-deduction clause by adding the words, "where such indebtedness is incurred with a view to tax avoidance."

That would be the exercise of a legislative power, which under the constitution the court does not possess. Courts can not, by interpretation, change the plain meaning of a statute on the theory that there existed in the minds of its framers a latent unexpressed intent not conveyed in the language used.

We can not assume, there being nothing in the language used to warrant such assumption, that the full intent and purpose of Congress are not clearly expressed in the language of section 234 (a) (2) of the revenue act of 1921. Many of the leading members of both the Senate and House who framed the revenue act of 1921 were Members of Congress in 1916 and participated in framing and passing the Federal farm loan act. They were perfectly familiar with its provisions and its purposes and had they intended that the exception in the interest-deduction clause of section 234 (a) (2) should not apply to interest paid by joint-stock land banks on their indebtedness incurred to purchase and carry the farmers' tax-exempt notes and first mortgages, which are securities under the provisions of the farm loan act, they would, we think, have expressed such intent by the use of appropriate language.

It is our opinion, therefore, that plaintiff's petition should be and it is hereby dismissed. It is so ordered.

Littleton, Judge; Green, Judge; Graham, Judge; and Booth, Chief Justice, concur.

[fol. 25] VI. JUDGMENT

At a Court of Claims held in the City of Washington, on the 3rd day of March, A. D., 1930, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

[fol. 26] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 35,036. Court of Claims. Term No. 905. The First National Bank of Chicago, a national banking association, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed May 16, 1930. File No. 35,036.

Supreme Court of the United States

Order Allowing Certiorari—Filed June 2, 1930

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4640)

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. ~~985~~ 124

THE FIRST NATIONAL BANK OF CHICAGO, A NATIONAL BANKING ASSOCIATION, *Petitioner*,

vs.

THE UNITED STATES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

HAROLD V. AMBERG,
Attorney for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Supreme Court of the United States

OCTOBER TERM, 1929.

No. 905.

THE FIRST NATIONAL BANK OF CHICAGO, A NATIONAL BANKING ASSOCIATION, *Petitioner*,

vs.

THE UNITED STATES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

STATEMENT OF CASE.

Petitioner seeks to have this Court review a judgment of the Court of Claims which was adverse to your petitioner (see R. p. 16).

Briefly, the essential facts, which are stipulated, are as follows: The First National Bank of Chicago filed for the year 1922 a consolidated income tax return, including therein the returns of its two affiliated Joint Stock Land Banks, the First-Trust Joint Stock Land

Bank of Chicago and the First-Trust Stock Land Bank of Dallas. In the suit in the Court of Claims The First National Bank of Chicago sought to recover $9,124.70, representing an additional tax assessed and collected as a result of the disallowance by the Government of a deduction of the interest paid by these Joint Stock Land Banks on their outstanding bonds. These Joint Stock Land Banks, as contemplated in the Federal Farm Loan Act, issued and sold their bonds for the purpose of creating a fund to make, and out of which were made, loans to farmers on the security of first mortgages on their respective farms. These farmers' notes and mortgages were designed to be, and were, of such a nature as to comply with (1) all the terms, conditions, restrictions, etc. of the Federal Farm Loan Act as requisite to qualify said loans as "first mortgages" in contemplation of said Act, so as to make them available as collateral security against the issue of additional Joint Stock Land Bank Bonds, and (2) all terms, conditions and restrictions, statutory or otherwise, specified in the laws of the States of issuance, respectively.

Section 26 of the Federal Farm Loan Act provides:

> "First mortgages executed to Federal Land Banks, or to Joint Stock Land Banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal and local taxation."

STATEMENT OF ISSUE.

The issue and the statutes involved are set forth in the petition for certiorari. Briefly, the petition con-

tends that in computing the net income of these Joint Stock Land Banks the interest paid by them on their bonds is deductible under the general provision of Section 234 (a) (2) of the Income Tax Law of 1921,—permitting the deduction of interest paid on indebtedness. The United States contends that this interest falls within the exception clause of said Section 234 (a) (2), which denies deduction of interest on "indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation under this title" (R. p. 2). In other words, the United States contends that the indebtedness of a Joint Stock Land Bank evidenced by its bonds is incurred for the purpose of purchasing or carrying farmers' "first mortgages" which are "obligations or securities the interest upon which is wholly exempt from taxation under this title" because they (first mortgages) are securities "exempt from taxation under this title", inasmuch as they fall within subsection (b) of Section 213 (b) (4) of the Income Tax Law of 1921. Section 213 (b) (4) is the interest exemption section, so-called, and provides that the interest on specified securities "shall be exempt from taxation under this title," among them being "securities issued under the provisions of the Federal Farm Loan Act." (R. p. 2) Your petitioner contends that this indebtedness of Joint Stock Land Banks falls within neither the spirit or purpose nor the letter of the exception clause of Section 234 (a) (2). The Court of Claims in its original opinion, which was, one dissenting, in favor of the plaintiff, apparently adopted the view that this indebtedness was not within the intended scope of the exception clause, but later the Court, judging from its subsequent opinion, felt that it

had been under a misapprehension in respect of the facts, some of which it assumed. The United States has not addressed itself to the question whether this indebtedness of Joint Stock Land Banks falls within the spirit and purpose of the exception clause but urges that it falls within the letter thereof. The Court of Claims, in its unanimous second opinion, held that the indebtedness falls within the letter of the exception clause, because the indebtedness is incurred for the purpose of purchasing or carryiny farmers' first mortgages, which are "exempt from taxation under this title" (under Section 213 (b) (4) (b) of the Income Tax Law)—as falling within "securities issued under the provisions of the Federal Farm Loan Act." The petitioner contends that the indebtedness of Joint Stock Land Banks evidenced by their bonds is not incurred for the purpose of purchasing or carrying the farmers' mortgage notes and that, in any event, the farmers' first mortgage notes do not fall within "securities issued under the provisions of the Federal Farm Loan Act".

The United States urged, in addition, an alternative construction of the phrase "obligations or securities the interest upon which is wholly exempt from taxation under this title". This contention the Court of Claims apparently thought it unnecessary to consider. The petitioner also raised the question of the constitutionality of the exception clause. This the Court of Claims ignored in its opinion.

These questions will be considered briefly below in the argument.

REASONS FOR ALLOWING THIS PETITION.

As set forth in the Petition for Certiorari, this is a "class" case of general interest which presents precisely a single question of law, involving the application of a definite set of facts to the provisions of a Federal statute (assuming the constitutionality and application of the statute). The constitutionality and application of the statute is also involved. A decision of this question will control the decision of similar suits, pending in the Board of Tax Appeals and a District Court, and also many claims and questions of tax liability which have not yet reached the stage of litigation, but which, in due course, would be litigated. The statutes at issue have remained unchanged since the Income Tax Law of 1921 and, therefore, the tax question involved is recurrent in each year in respect of each taxpayer. Your petitioner, on its best information and belief, represents that this issue involves, at least, twelve and possibly more taxpayers and pertains to their respective income tax returns over a period of ten years in a varying number of years. Further, your petitioner represents that the amount of tax liability involved is relatively appreciable.

Your petitioner further represents that there is a public interest, inasmuch as this question indirectly affects the Land Bank System originated by Congress. This public interest is manifested by the suggestion of the Federal Farm Loan Bureau of the Treasury Department to the Department of Justice that a final decision in this case of the question at issue would be desirable.

Furthermore, in the case of *Nauts vs. Slayton*, 36 Fed. (2d) 145, (decided December 6, 1929), the Circuit Court of Appeals for the Sixth Circuit held the

exception clause to be unconstitutional insofar as it was applied to indebtedness incurred to purchase Municipal bonds as, in effect, imposing a tax on Municipal bonds which was beyond the power of Congress. Based on principles of construction laid down by this Court in *National Life Insurance Co. vs. United States*, 277 U. S. 508, the exception clause would not be applicable to this indebtedness of Joint Stock Land Banks and the interest on their bonds would, therefore, be deductible. This Court, on April 28, 1930, granted a Petition for a Writ of Certiorari in the case of *Nauts vs. Slayton*, so the question of the constitutionality of the exception clause is pending before this Court.

The errors, which will be discussed below briefly in the argument, which the petitioner urges as grounds for the granting of a Writ of Certiorari and the reversal of the judgment of the Court of Claims are:

First: The Court of Claims erred in holding that the indebtedness of Joint Stock Land Banks evidenced by their bonds was indebtedness incurred for the purpose of purchasing or carrying "obligations or securities the interest upon which is wholly exempt from taxation under this title", in that it held that the indebtedness was incurred for the purpose of purchasing or carrying the farmers' first mortgages and, more particularly, that the farmers' "first mortgages" fall within the classification of "securities issued under the provisions of the Federal Farm Loan Act" (Section 213 (b) (4) (b)).

Second: The Court of Claims erred in ignoring the question of the constitutionality and application of the exception clause at issue.

SUMMARY OF ARGUMENT.

First Error Assigned.

Petitioner contends that in adopting the exception clause in respect of interest deduction the Congress had a definite purpose and, in contemplation thereof, fixed a definite limit to the scope of the exception clause, and that, incidentally, this Congressional intent in these respects is an essential guide in construing not only the spirit but the letter of the exception clause. Interest paid on indebtedness being uniformly allowed as a deduction in computing net income, the Congress must have had a particular purpose when it denied deduction of interest in respect of a particular type of indebtedness. This purpose was to discourage the borrowing of money by taxpayers in order to purchase a particular class of tax-exempt securities,—the taxpayer thereby getting the benefit of the exemption of the interest received on such tax-exempt securities and the deduction of the interest paid on the indebtedness so incurred. As the Senate Committee on Finance said, (Majority Report, 65th Cong. 3d Session-Senate Report No. 617, December 8, 1918, at p. 6), "*the limitation suggested above would operate to discourage this practice* except in the case of the latter issues of Liberty bonds" (Italics ours). The purpose of the exception clause is an essential guide in construing not only the spirit but the letter of the clause. *Holy Trinity Church vs. United States*, 143 U. S. 457, at p. 463; *Heidenfeld vs. Daney, Gold*, 93 U. S. 634, at p. 639.

Joint Stock Land Banks were authorized by the Congress, for one primary purpose, to wit, to loan money to farmers on first mortgage security and using

the resultant first mortgages as security to borrow additional money by issuing their bonds, and to loan the resultant funds to farmers, etc. As said by the Attorney General (*Opinions of Attorneys General, Vol. 31, 105*) "This continuous flow and reflow of mortgages and bonds constitutes the prime function of the whole system." Without further elaboration of argument, it is submitted that in loaning its money to the farmers a Joint Stock Land Bank is not indulging in the "practice" which Congress desired to discourage when it adopted the exception in respect of interest deduction. In fact, the bank is incurring indebtedness in the ordinary course of its business and in full conformity with the single purpose of its creation, as contemplated by the Congress.

The express language of the exception clause denies deduction only of interest on indebtedness incurred or continued for the purpose of purchasing or carrying not tax-exempt securities in general but a specific class of "obligations or securities", to wit, those "the interest upon which is wholly exempt from taxation under this title",—the Congress having, prior to the adoption of the exception clause, specified in Section 213 (b) (4) of the Income Tax Law of 1921 the "obligations" "or" "securities" "the interest upon" which "shall be exempt from taxation under this title". The mere coincidence of tax exemption on the income of securities purchased with borrowed money and the deductibility of interest on that borrowed money, does not bring the indebtedness within the exception clause. This obvious conclusion is supported by at least three rulings of the Income Tax Bureau, not quoted or cited here for the sake of brevity, and by the Board of Tax Appeals (*Appeal of Greenville Tex-*

tile & Supply Co., 1 B. T. A. 152) which held that indebtedness incurred to buy stock of a corporation is not within the clause because "in order to deny deduction it is not only necessary to construe the word 'securities' to mean 'stock' but to construe the word 'interest' to mean 'dividends'.".

These same rulings show that the indebtedness must be incurred for the *purpose* of purchasing or carrying such specified securities. The petitioner submits that that purpose of a Joint Stock Land Bank's borrowings on its bonds is to loan money to farmers and the acquisition of the farmers' first mortgages is purely incidental. The petitioner, furthermore, contends that even if the purpose be said to be to acquire the farmers' first mortgages, such acquisition is in no literal sense a "purchase or carry" in contemplation of the exception clause. Considering the context and purpose of the clause, to "purchase," it is submitted, obviously means "to buy" with an inference of simultaneous payment. In the 1917 Income Tax Law the words "to purchase" appeared alone. In the 1918 Act the words "or carry" were added, and the Senate Finance Committee (see p. 7 *supra*) states in respect of the 1918 exception clause:

> "This limitation is substantially the same as the one contained in the present law."

Without citation or elaboration of argument, past rulings of the Income Tax Unit, the history of the language of the clause "to purchase or carry," the sense of "carry" in financial transactions under consideration, indicate quite clearly that "carry" was added to supplement the word "purchase" and not to impart a new element, and was added merely to catch indebt-

edness incurred or continued to pay for a security previously purchased. In other words, in order to have a purchase or carry within the exception clause the purpose of the indebtedness must be in some way connected with a buying of and/or payment for these specified securities. "Carry" presupposes a "purchase."

Assuming, however, for the sake of the argument, that the indebtedness of a Joint Stock Land Bank evidenced by its bonds is incurred with a purpose "to purchase or carry" the farmers' "first mortgages," the farmers' first mortgages do not fall within the class of obligations or securities specified in the exception clause, to wit, "obligations or securities the interest upon which is wholly exempt from taxation under this title," because in order to fall within that clause they must fall within the phrase "securities issued under the provisions of the Federal Farm Loan Act,"—sub-section (b) of Section 213 (b) (4). This section specifies a certain type of obligations or securities the interest upon which is "exempt from taxation under this title." These are obligations of the United States, such as Treasury bonds, Treasury notes, Liberty bond issues, etc., obligations of States, Territories, political subdivisions thereof such as Counties, Cities, Special Assessment Districts, also obligations of the District of Columbia, also bonds issued by the War Finance Corporation, and "securities issued under the provisions of the Federal Farm Loan Act," which, the petitioner submits, are the bonds issued by Federal Farm Loan Banks and Federal Joint Stock Land Banks. The above obligations or securities are of the same dignity and wholly tax-exempt as to interest and available in the open market for purchase by taxpayers, which was the category of obligations or se-

curities the Congress had in mind in passing the interest exception clause.

The Court of Claims did not specifically in so many words say that the farmers' first mortgages are "securities issued under the provisions of the Federal Farm Loan Act," but held that the first mortgages were securities, generally speaking, that Section 18 of the Federal Farm Loan Act refers to them as securities and provides for their use as collateral security for Joint Stock Land Bank Bonds, that in Section 26 of the Federal Farm Loan Act the farmers' "first mortgages" and the Bank's bonds are put in the same category as "instrumentalities of the Government of the United States" (R. pp. 22-26) and that, therefore, "the notes and first mortgages owned and held by Joint Stock Land Banks, and used by them as collateral security for the payment of their bonds, are *securities under the provisions of the Federal Farm Loan Act of 1916, and that as such the interest upon them is specifically exempt from taxation under Section 213 (b) (4) of the Revenue Act of 1291*" (Italics ours). The petitioner submits that none of these reasons justifies the conclusion that the farmers' first mortgages fall within the phrase "securities issued under the provisions of the Federal Farm Loan Act." It may be granted that the farmers' first mortgages are securities, generally speaking, and are referred to as collateral security in Section 18 of the Federal Farm Loan Act and may be used as collateral security for the issuance of additional bonds. So, likewise, under said Section 18 of the Federal Farm Loan Act, are Liberty bonds referred to and may be likewise used. Clearly, Liberty bonds are not comprehended by the phase "securities issued under the provisions of the

Federal Farm Loan Act." The Court of Claims, apparently, answers this argument by saying that, as a matter of fact, Liberty bonds "are not so used by Joint Stock Land Banks for that purpose to any appreciable extent" (R. p. 24).

The origin of the phrase "issued under the provisions of the Federal Farm Loan Act" is obvious. It came from Section 26 of the Federal Farm Loan Act, which was adopted shortly before sub-section (b) was added to Section 213 (b) (4) of the Income Tax Law. Said Section 26 reads as follows:

> "First mortgages *executed to* Federal land banks, or to joint stock land banks, and *farm loan bonds issued under the provisions of this Act* shall be deemed to be instrumentalities of the Government of the United States etc." (Italics ours).

This indicates clearly that securities issued under the Federal Farm Loan Act mean Farm Loan Bonds, which, by definition in the Federal Farm Loan Act, are bonds issued by Federal Land Banks and Joint Stock Land Banks.

This Section 26 does, as the Court of Claims says, class both the farmers' first mortgages and bank's bonds as instrumentalities of the United States but clearly distinguishes the first mortgages as *executed to* the banks and the bank's bonds as *"issued under the provisions of* the Federal Farm Loan Act". This distinction is carried into the phrase "securities issued under the provisions of the Federal Farm Loan Act".

Again, the phrase "securites issued under the provisions of the Federal Farm Loan Act" was first used in the exemption section which had to do with exemp-

tions to individuals, and, obviously, Congress had no intention in the interest exception clause of denying interest deduction on indebtedness incurred by an individual taxpayer to buy a security which that taxpayer could not buy. They could buy, of course, Farm Loan Bonds.

Again, historically, but for the exemption contained in the Federal Farm Loan Act the farmers' "first mortgages" would be income taxable, which, of course, they would not be if they were "securities issued under the provisions of the Federal Farm Loan Act".

Again, the Income Tax Unit has ruled that the plain promissory note of a Joint Stock Land Bank issued by it to evidence a temporary borrowing does not fall within "securities issued under the provisions of the Federal Farm Loan Act" and the interest thereon is, therefore, not tax exempt (I. T. 1806, 1923). If a Joint Stock Land Bank's own note is not a "security issued under the provisions of the Federal Farm Loan Act," how can a mortgage note executed to the bank acquire the status of a "security issued under the provisions of the Federal Farm Loan Act"?

Again, even assuming that one would speak of the execution and delivery of an individual farmer's mortgage as an "issue" of that mortgage and that it may be that such a mortgage is issued in contemplation of the provisions of the Federal Farm Loan Act so that they will be qualified as mortgages thereunder, such mortgages, in an exact sense, are *issued* under the State laws. Incidentally, the Court of Claims ignores the word "issue". Securities which are *issued* under the Federal Farm Loan Act are the securities issued by the Land Banks and Joint Stock Land Banks, to wit, their bonds.

The above reasons, which are merely stated *seriatim* without elaboration of argument or citation of authorities which clearly support the mere statements, your petitioner submits, show clearly that the phrase "securities issued under the provisions of the Federal Farm Loan Act" does not comprehend farmers' first mortgages and, therefore, the indebtedness of Joint Stock Land Banks evidenced by their bonds, even if it may be said to be incurred for the purpose of purchasing or carrying the "first mortgages", is not for the purpose of buying or purchasing "obligations or securities the interest upon which is wholly exempt from taxation, under this title"—contrary to the opinion of the Court of Claims on which its judgment was predicated.

Incidentally, the United States urged an alternative construction of the phrase "obligations or securities the interest upon which is wholly exempt from taxation under this title", to wit, that the exemption need not necessarily be found in Section 213 (b) (4) of the Income Tax Law but comprehends the exemption granted to "first mortgages" under Section 26 of the Federal Farm Loan Act. In other words, that "exempt from taxation under this title" meant exempt from the tax imposed by this title. This contention, apparently, the Court of Claims thought it unnecessary to consider, so there is no occasion, at this juncture, for the petitioner to discuss in detail this alternative contention.

In construing the statutes at issue, it is submitted, the defendant, treating the interest deduction exception clause and the exemption section as a series of unrelated words and applying random definitions to such words, sets up alternative constructions and urges that the indebtedness at issue falls within the exception clause. In doing this the defendant, contrary to

e rules governing the interpretation of statutes levy-
g taxes, attempts to extend the meaning of the stat-
es beyond "the clear import of the language used"
ıd "to enlarge their operations so as to embrace
atters not specifically pointed out" (*Gould vs. Gould,*
5 U. S. 151, p. 153). Neither the exception clause
or sub-section (b) of the exemption section are series
unrelated words but have a definite origin and sig-
ficance as complete clauses,—which is consistent with
ıd consequent of the purpose of Congress in adopt-
g them.

The fact that the petitioner gets the benefit of the
eduction by virtue of the consolidated return provi-
ons of the Income Tax Law does not, as the Court of
laims rightly says, defeat the deduction of the inter-
t if, in fact, it is deductible. The fortuitous advan-
ges or disadvantages of consolidated returns are not
issue. The fact that the Joint Stock Land Banks
ıd no net taxable income in the particular year, aside
om the interest deduction at issue, has no pertinency
the issue unless this fact, plus the consequences un-
er the consolidated return, is reflected in Congres-
onal action and manifested in the purpose and lan-
ıage of the interest exception clause. There is no
ıch reflection or manifestation.

Furthermore, as stated by the Court of Claims, ex-
nptions to Joint Stock Land Banks in the Federal
arm Loan Act do "not indicate the purpose or intent
Congress that they should enjoy other benefits and
xemptions not given in the Act." On the other hand,
ese exemptions were given primarily not for the
nefit of the Joint Stock Land Banks but for the
nefit of the farmers, and the petitioner suggests that
view of the drastic restrictions placed on Joint Stock

Land Banks and their earnings for the benefit of the farmers, it is not to be lightly assumed that the Congress intended any additional restrictions not set forth in the Federal Farm Loan Act or that deductions permitted by the Income Tax laws should arbitrarily be denied to Joint Stock Land Banks. Petitioner asks merely for a construction of the interest exception clause as applied to the indebtedness of Joint Stock Land Banks on their bonds in contemplation of the spirit, purpose and letter of the exception clause and accepted rules for interpreting statutes levying taxes.

Second Error Assigned.

As stated above herein among the reasons for the allowance of the petition for certiorari, the interest exception clause has been declared unconstitutional insofar as it is applied to indebtedness incurred for the purchase of Municipal bonds in a case (*Nauts vs. Slayton,* 36 Fed. (2d) 145), which is now pending before this Court on a Writ of Certiorari granted April 28, 1930. It is not the purpose of the petitioner to argue this question of constitutionality herein, but merely to suggest to this Court, as it did to the Court of Claims, that if the decision in *Nauts vs. Slayton* is sound, then, on the principles of construction laid down in *National Life Insurance Co. vs. United States, supra,* the interest exception clause is not applicable to the indebtedness of Joint Stock Land Banks at issue. If the denial of interest deduction on indebtedness incurred to purchase Municipal bonds is unconstitutional as being a tax on Municipal bonds and thus beyond the power of Congress, the Congress "had no purpose to subject" instrumentalities of the United States, the farmers' "first mortgages", "to burdens

which could not be imposed upon those of a State", so the exception clause would not be applicable to indebtedness incurred by Joint Stock Land Banks to make loans to farmers. Furthermore, to burden such farmers' "first mortgages" would be contrary to the manifest general purpose of Section 26 of the Federal Farm Loan Act, which expressly disavows any purpose to tax farmers' "first mortgages" not only as to income but in any manner whatsoever.

CONCLUSION.

Because (1) this is a "class" case and presents a question of both general importance and public interest, and (2) the constitutionality of the interest deduction exception clause is now before this Court and the question herein should be considered in connection with such question of constitutionality, and (3) the errors assigned, the petitioner respectfully submits that the petition sets forth a proper case for review by this Court and that the Writ of Certiorari should be granted.

Respectfully submitted.

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